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February 3, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

Re: ***Petition of Allband Communications Cooperative for Waiver of Part 54.302 and the Framework to Limit Reimbursable Capital and Operating Costs***
In the matter of: Connect America Fund, WC Docket No. 10-90
A National Broadband Plan for Our Future, GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135
High-Cost Universal Service Support, WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92
Federal-State Joint Board on Universal Service, CC Docket No. 96-45
Lifeline and Link-Up, WC Docket No. 03-109
Universal Service Reform--Mobility Fund, WT Docket No. 10-208

Dear Ms. Dortch:

Please find enclosed for filing in the above dockets the **Petition of Allband Communications Cooperative for Waiver of Part 54.302 and the Framework to Limit Reimburseable Capital and Operating Costs**.

We are also sending a copy via e-mail to Cathy Williams, Nicholas A. Fraser, and PRA@fcc.gov, and to Staff member Amy.Bender@fcc.gov, and to the Commission's copy contractor at fcc@bcpiweb.com.

Respectfully submitted,

ALLBAND COMMUNICATIONS COOPERATIVE

By its counsel

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DLK/cjd
Atts.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
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	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

PETITION OF ALLBAND COMMUNICATIONS COOPERATIVE
FOR WAIVER OF PART 54.302 AND THE FRAMEWORK
TO LIMIT REIMBURSABLE CAPITAL AND OPERATING COSTS

ALLBAND COMMUNICATIONS COOPERATIVE

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Dated: February 3, 2012

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SUPPORTING ATTACHMENTS

I. INTRODUCTION

Allband Communications Cooperative ("Allband"), pursuant to Section 1.3[1] of the Commission's rules, respectfully petitions the Commission for a waiver of this Commission's Report and Order and Further Notice of Proposed Rulemaking of the Federal Communications Commission ("FCC Order"), effective November 18, 2011, as noticed in the Federal Register on November 29, 2011. In this waiver request, Allband requests the following relief:

1. The Commission waive the implementation of the Part 54.302 rule to Allband, based on the facts presented herein;

2. The Commission waive for Allband the Framework to Limit Reimbursable Capital and Operating Costs, based on the facts presented herein.

Allband asserts, and establishes unequivocally herein, that absent Commission grant of the above waivers, that the implementation of the Part 54.302 rule or the Framework to Limit Reimbursable Capital and Operating Costs would irreparably and immediately harm Allband by providing insufficient revenues to:

- Continue to provide voice service to any of its customers and,
- Pay the principal and interest on its RUS loan and,
- Continue operations as a telecommunications carrier.

Allband respectfully requests that the Commission promptly review and approve this waiver request in its entirety, in recognition of the irreparable harm described herein that will occur on (and before) July 1, 2012, if the Commission's Federal Universal Service Fund (USF) changes are implemented for Allband. Allband asserts that this waiver Petition, supported by the attachments herein, provides good cause for the Commission to grant this waiver petition on an urgent and prompt basis.

[1] 47 C.F.R. Section 1.3

Allband further asserts that the approval by the Commission of this waiver petition is necessary and appropriate because the Commission's Order, as presently constituted, and as applied to Allband (and absent a waiver), would be unlawful and unreasonable on both constitutional and statutory grounds, as discussed infra.

II. HISTORY AND BACKGROUND REGARDING ALLBAND

Numerous unserved areas of the United States have had no telecommunications service for many decades. As a result, based upon Congressional mandates and intent set forth in the 1996 Act, the Commission recognized as Incumbent Local Exchange Carriers (ILECs) a number of carriers that were formed to serve areas unserved by any telecommunications provider.

Allband was formed in late 2003 as a non-profit member cooperative to serve a remote and unserved area located in the lower peninsula of Michigan, including portions of four (4) counties that previously had no service. The Michigan Public Service Commission (MPSC) licensed Allband to provide service in 2004[2] and this Commission under its authority recognized Allband as an ILEC and allowed it to be a member of the National Exchange Carrier Association (NECA) and to participate in the NECA intercarrier compensation tariffs and pools and to receive Federal USF revenues as an ILEC.[3]

Service was not provided in the area now served by Allband because it is remote and difficult to serve with few customers.[4] No other service provider was willing to incur the very high costs per-customer to provide service. In 2005, when the Commission allowed Allband to receive Federal USF

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[2]The MPSC granted Allband a temporary license to serve customers within a designated service area boundary on August 31, 2004 and granted a permanent license on December 2, 2004, in Case No. U-14200.

[3]See Order, *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules in WC Docket No. 05-174*, released August 11, 2005 (Allband Order).

[4] Allband currently serves 163 lines and has a customer density of 1.09 lines per square mile.

revenues, it was clear that this was a costly undertaking and that a significant level of Federal USF revenue per-line would be required to maintain affordable customer rate levels while deploying the facilities necessary to provide service. The Commission stated in its Order approving Allband's waivers allowing it to receive Federal USF revenues that:

> "Based on the record, we find that all of these waivers are in the public interest because they will facilitate the ability of Allband to serve previously unserved areas."[5]

Relying on the revenues provided by the Federal USF, the Rural Utilities Service (RUS) provided loans to Allband totaling approximately $8 million to purchase and construct facilities to provide service in the unserved area. Federal USF revenues constitute 84 percent of Allband's total regulated and non-regulated revenues.[6] As a very significant portion of Allband's revenues associated with delivering service in this remote, high-cost area, the Federal USF revenues would, together with Allband's other revenues, enable Allband to service its debt obligations to RUS. If Allband were to suffer a shortfall in the realization of the Federal USF revenues as ordered by the Commission (the Commission's $3000 per line annual cap would reduce Allband's regulated revenues by 55 percent), Allband would be unable to meet its loan obligations to the RUS, a sister federal agency of this Commission.

Allband has, since 2005, deployed a network financed using RUS loans, and designed to RUS specifications and requirements, to serve the customers in its service area. The current sufficient and predictable level of Federal USF revenues are an essential and critical component to (a) maintaining affordable customer rates and services that are comparable to those provided in urban areas,

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[5] Allband 2005 Waiver Order, paragraph 1.

[6] Non-regulated revenues for services that utilize Allband's loop facilities are included in the analyses in this Petition for Waiver.

(b) providing and maintaining quality service, and (c) meeting its debt obligations associated with the network used to deliver such services.

III. THE NEED AND JUSTIFICATION FOR THE WAIVER OF THE COMMISSION REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING RELEASED ON NOVEMBER 18, 2011, AS APPLIED TO ALLBAND

In this Order[7], the Commission adopted a rule and a framework which will substantially reduce the level of Federal USF revenues that Allband has available to (a) maintain and operate its telecommunications network, (b) provide voice service to its customers, and (c) make principal and interest payments on its RUS loan.

A. Rule Limiting Support to $3000 per-line Annually

In the Order, the Commission adopts a rule[8] limiting federal USF revenues to $3000 per-line annually or $250 per-line per-month:

> "*274. Discussion.* After consideration of the record, we find it appropriate to implement responsible fiscal limits on universal service support by immediately imposing a presumptive per-line cap on universal service support for all carriers, regardless of whether they are incumbents or competitive ETCs. For administrative reasons, we find that the cap shall be implemented based on a $250 per-line monthly basis rather than a $3,000 per-line annual basis because USAC disburses support on a monthly basis, not on an annual basis. We find that support drawn from limited public funds in excess of $250 per-line monthly (not including any new CAF support resulting from ICC reform) should not be provided without further justification.
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> 275. This rule change will be phased in over three years to ease the potential impact of this transition. From July 1, 2012 through June 30, 2013, carriers shall

[7] *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up and Universal Service Reform – Mobility Fund* in Dockets WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 and WT Docket No. 10-208, Report and Order adopted October 27, 2011 and released on November 18, 2011 (Order).

[8] Order, Appendix A, Final Rules, Part 54.302.

> receive no more than $250 per-line monthly plus two-thirds of the difference between their uncapped per-line amount and $250. From July 1, 2013 through June 30, 2014, carriers shall receive no more than $250 per-line monthly plus one-third of the difference between their uncapped per-line amount and $250. July 1, 2014, carriers shall receive no more than $250 per-line monthly."[9]

This rule has the effect of retroactively depriving Allband of Federal USF revenues for recovery of investments already made in its network and associated operating expenses. Had Allband known that this rule limiting its Federal USF revenues would be enacted, it would not have (and could not have) undertaken forming the ILEC to provide service to customers in this unserved area, and Allband could not have obtained loans from RUS (that rely in significant part on these revenues for repayment) to finance the network facilities necessary to provide service.

B. Framework to Limit Reimbursable Capital and Operating Costs

In the Order, separate and apart from the Part 54.302 rule adopted by the Commission, the Commission adopts another framework to limit the recovery of network investments and expenses from the Federal USF.[10]

> "210. In this section, we adopt a framework for ensuring that companies do not receive more support than necessary to serve their communities. The framework consists of benchmarks for prudent levels of capital and operating costs; these costs are used for purposes of determining high-cost support amounts for rate-of-return carriers. This framework will create structural incentives for rate-of-return companies to operate more efficiently and make prudent expenditures. In the attached FNPRM, we seek comment on a specific proposed methodology for setting the benchmark levels to estimate appropriate levels of capital expenses and operating expenses for each incumbent rate-of-return study area, using publicly available data. We delegate authority to the Wireline Competition Bureau to implement a methodology and expect that limits will be implemented no later than July 1, 2012."[11]

[9] Order, paragraphs 274 and 275, footnote deleted.

[10] Order, paragraphs 210 to 226 and Appendix H.

[11] Order, paragraph 210, footnote deleted.

In this case, the Commission did not adopt a rule, but asked for comment on a methodology that will have an impact on the Federal USF revenues lost by Allband similar to the Part 54.302 rule. This framework will have the effect of retroactively depriving Allband of Federal USF revenues for recovery of investments already made in its network and associated operating expenses. Had Allband known that this Framework limiting its Federal USF revenues would be enacted, it very likely would not have undertaken forming the ILEC to provide service to customers in this unserved area, and Allband could not have obtained loans from RUS (that rely in significant part on these revenues for repayment) to finance the network facilities necessary to provide service.

C. The Adverse Effect, and Irreparable Harm Resulting From, the Commission Rule and Framework on Allband's Ability To Provide Universal Service To Customers

Absent the FCC rule change, Allband would receive an estimated $8,569 per line in 2012 in Federal USF revenues or $714 per-line per-month.[12] The effect of the Commission's annual $3000 per-line Federal USF limit on Allband is to reduce its Federal USF revenues by:[13]

- July 1, 2012 - $1,856 per-line annually ($155 per-line per-month) or approximately a 22% total revenue reduction.
- July 1, 2013 - $3,713 per-line annually ($309 per-line per-month) or approximately a 43% total revenue reduction.
- July 1, 2014 - $5,569 per-line annually ($464 per-line per-month) or approximately a 55% total revenue reduction.
- Thereafter – Approximately a 65% total revenue reduction.

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[12] Federal USF amounts from the Universal Service Administrative Company High Cost Support Report, Appendix HC01-1Q2012. Allband support for the quarter shown is $349,182. The annual estimate of Federal USF revenues would be $349,182 times 4 quarters or $1,396,728. The annual support per-line would be $1,396,728 divided by 163 Allband lines in service or $8,569.

[13] See Appendix 1, Schedule 4 for calculations of the annual $3,000 per line support cap impacts. Financial and rate impacts are summarized and presented in Appendix 1, Tables 1, 2 and 3. Supporting schedules are also included in Appendix 1.

The RUS loan covenant with Allband requires that Allband have sufficient revenues to at least pay the interest on the RUS loans.[14] The effect of the proposed rule change is that Allband will be unable to pay the entire annual RUS loan payment of $638,147, of which $324,913 is interest, even in the first year of the phase in of the rule when the annual revenue reduction is $302,576.[15]

To operate its telecommunications network, provide service and repay its loans, Allband only has the following sources of revenue in 2012 for its regulated telecommunications operations:

	Estimated Annual Revenue	**Percent of Total**
A. Revenues from local customer rates	$34,593	2.1%
B. Intercarrier compensation revenues[16]	$146,668	8.9%
C. Miscellaneous revenues	$1,792	0.1%
D. Federal USF revenues	$1,396,728	84.3%
E. Non-regulated revenues	$76,215	4.6%
F. Total	$1,655,995	100.0%

The revenues lost by Allband as a result of the FCC's rule change to cap support at $3,000 annually ($907,728 or $5,569 per-line) are approximately 55% of its regulated revenues plus non-

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[14] October 19, 2005 Loan Agreement between Allband Communications Cooperative and the United States of America – Section 5.12 Tier Requirement:

> "From the date of this Agreement until the date specified in Schedule 1, the Borrower will maintain a TIER of at least 1.0. Thereafter, starting on the date specified in Schedule 1… the Borrower shall maintain the TIER level(s) as specified in Schedule 1."

The ability to pay interest on a RUS loan is measured by a Times Interest Earned (TIER) ratio by RUS. A ratio below one means that a company has insufficient net income to pay the loan interest. As shown on Attachment 1, Table 1, the rule change drops Allband's TIER ratio from a positive 1.2 to a negative 1.7.

[15] Allband's 2012 annual RUS loan payment is 638,147.16 of which $324,913 is interest. The loss of Federal USF support in the first year of the phase in of the rule (July 1, 2012) is $302,576 ($1,856/line). This loss grows to $605,152 (3,713/line) on July 1, 2013 and $907,728 ($5,569/line) on July 1, 2014. It is clear that Allband would not have sufficient income to enable full payment of the annual RUS loan even in the first year of the phase in of the rule. See Appendix 1, Table 3 for calculation of shortfalls in income required for loan payments.

[16] Revenues collected from other carriers for the use of Allband's network. This also includes $6,061 of revenue associated with the MPSC State Fund. The MPSC established a state fund to replace revenues lost when it lowered intrastate access rate levels - Opinion and Order, *In the Matter, on the Commission's own motion, to implement 2009 PA 182, MCL 484.2310,* in Case No. U-16183, dated August 10, 2010.

regulated revenues. This revenue loss cannot be made up through rate increases to local Allband customers. Allband's basic consumer rate is $19.90 per month. This rate is reasonably comparable to urban rates and is affordable as required by the Federal Act, Section 254(b)(1) and (3). This rate is well above the benchmark affordable rate levels that the FCC establishes in the Order.[17] Allband cannot recover the Federal USF revenues lost as a result of the Order from its customers without losing its entire customer base. If Allband increased local customer rates to compensate for the Federal USF revenues lost as a result of the ordered $3,000 per line annual Federal USF cap, the effect would be an unaffordable and unreasonable increase in those customer rates. During the phase in and beyond, the monthly rate increase and total monthly rate would be:

	Basic Rate	**Rate Increase**[18]	**Total Rate**
July 1, 2012	$19.90	$155.00	$174.90
July 1, 2013	$174.90	$155.00	$329.90
July 1, 2014	$329.90	$155.00	$484.90

It is clearly unreasonable to expect customers to bear these rate increases and to keep their phone service. In addition to the fact that customers could not afford these rates, these rates would be

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[17] Order, paragraphs 234 to 247. Specifically see paragraphs (footnotes deleted):

> "238. Based on the foregoing, and as described below, we will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees….
>
> 243. In addition, because we anticipate that the rate floor for the third year will be set at a figure close to the sum of $15.62 plus state regulated fees, we are confident that $10 and $14 are conservative levels for the rate floors for the first two years. $15.62 was the average monthly charge for flat-rate service in 2008, the most recent year for which data was available. Under our definition of "reasonably comparable," rural rates are reasonably comparable to urban rates under section 254(b) if they fall within a reasonable range above the national average…."

[18] Each year's annual per line reduction of $1,856 per line divided by 12 months to give a monthly reduction per line. For example the yearly Federal USF revenue reduction for Allband is $1,856. The monthly reduction in Federal USF revenues is $1,856 divided by 12 or $155 per line per month.

at odds with the Act's requirement for affordable rates that are comparable to those charged in urban areas.

Similarly, Allband cannot recover the lost revenues from its switched intercarrier compensation rates. In its Order, the FCC has capped and is, over a transition, eliminating most of the switched intercarrier compensation revenue.[19] As a consequence, Allband may not recover any significant amount of the Federal USF revenue losses from this revenue source. The only intercarrier compensation rate that was not capped by the Commission is the intrastate originating switched access rate. If Allband tried to recover its Federal USF revenue loss from this revenue source, this rate would have to increase exponentially. An increase is clearly not feasible because Allband would no longer have interexchange carriers willing to serve customers in its service area. Even in the unlikely occurrence that interexchange carriers continued to provide service, when these switched access rate increases are flowed through to increases to customer toll rates[20], it is quite likely that all the landline toll customers in Allband's service area would disconnect this service.

Finally, Allband cannot recover the lost Federal USF revenues from the Michigan state universal service fund. That fund was established by state law[21] and MPSC rule[22] to specifically recover only intrastate access charge reductions adopted in 2010 by the MPSC.

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[19] Order, Appendix A – Final Rules:

- Most Intercarrier compensation rates capped – Part 51.909(a)(1) and (2)
- Most Intercarrier compensation rates transitioned to a zero rate level – Part 51.909(b) to (j)
- Revenue replacement for revenues lost when Intercarrier compensation rates are reduced to zero, transitioned out at 5% per year – Part 51.917(b)(2)

[20] This increase would violate the Section 254 provisions of the Act because Allband's rates would be substantially higher than comparable rates in urban areas.

[21]State of Michigan, 95th Legislature Regular Session of 2009, House Bill 4257.

[22] Opinion and Order, *In the Matter, on the Commission's own motion, to implement 2009 PA 182, MCL 484.2310*, in Case No. U-16183 dated August 10, 2010.

As this analysis shows, there is no regulated revenue source, other than the Federal USF where Allband may recover the revenues the FCC will eliminate ($5,569 annually per-line) as a result of its new Section 54.302 rule. Non-regulated revenues sources cannot make up for the Federal USF revenue loss. As Appendix 1, Schedule 1 shows, non-regulated revenue sources only provide $76,215 or approximately $470 per-line annually in revenues, clearly insufficient to close the revenue gap caused by the lost Federal USF revenues.

In addition to the $3000/line annual Federal USF cap, the Framework to Limit Reimbursable Capital and Operating Costs is to be implemented on July 1, 2012. Based on information recently released by the Commission on December 2, 2011, the Framework could result in the loss of $3,259 annual cost per-line resulting in an estimated $398,435 annual loss in Federal USF support.[23] Like the Part 54.302 rule, this Framework would apply retroactively to investments and related costs already incurred by Allband. It is unclear exactly what that actual loss will be because the Framework is based on a complex regression analysis and may be revised somewhat during the Further Notice of Proposed Rulemaking (FNPRM). However, a loss of Federal USF revenues of this magnitude will have a similar effect as the Part 54.302 rule already discussed. Allband will have insufficient revenues to pay the principle on it RUS loans and the company will be forced into default. Allband could not remain a going concern business and would be unable to provide telecommunications services to its customers. See Appendix 1, Tables 4, 5 and 6 (attached to this

[23] Source – www.fcc.gov/encyclopedia/rate-return-resources; Connect America Fund FNPRM Appendix H data; 2010 Study Area Capped Cost per-loop; Allband Comm Coop – the data displayed for Allband shows that the Commission's framework to limit investment and expense funding from the Federal USF retroactively, will reduce Allband's cost recovery by approximately $3,259 per-line annually. It is unclear exactly what that actual loss will be because the framework is based on a complex regression analysis and may be revised somewhat during the FMPRM process, but if the rule adopted is close to the proposed framework, the capped cost reduction for Allband will be close to this number. If the FCC numbers are correct, the $3,259 annual per-line capped cost loss results in an approximate annual total cost loss of $531,000. The resulting estimated Federal USF revenue loss is approximately 75% of the cost loss or approximately $398,435 (See Appendix 1, Schedule 5 to this Petition for Waiver).

Petition) for an analysis of financial and customer rate impacts associated with the Framework to Limit Reimbursable Capital and Operating Costs.

D. Allband Meets All of the Specific Requirements in the Commission's Order to Receive a Waiver of the Ordered Rule and Framework[24]

As required by the Commission's Order, Appendices to this Petition for Waiver provide the requested information about Allband's individual circumstances to support approval of Allband's Petition for Waiver. The required information shows that the ordered Part 54.302 rule and the Framework to Limit Reimbursable Capital and Operating Costs reductions in current Federal USF revenue would (a) destroy Allband's financial viability, (b) imperil and in fact eliminate voice service to consumers in the area where Allband provides service, and (c) require Allband to default on its loan payments to RUS. Because it is negatively affected by the universal service reforms, Allband is filing this Petition for Waiver that clearly demonstrates that good cause exists for exempting Allband from (a) the Part 54.302 rule and (b) the Framework to Limit Reimbursable Capital and Operating Costs. Approval by the Commission of the Waiver is necessary and in the public interest to ensure that consumers in the area served by Allband continue to receive voice service. Allband requests the Commission to subject the information attached to this Petition for Waiver to a rigorous, thorough and prompt review and to request additional information if it deems necessary. As required by the Order, the following information is attached to this Petition for Waiver:

1. Appendix 1 - A total company earnings review, including:

- All revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services that utilize the supported facilities.
- A demonstration that, without its existing universal service funding, Allband's revenues would not be sufficient to achieve the purposes of section 254 of the Act.

[24] Order, paragraphs 539 to 544.

- A demonstration that Allband needs its existing universal service funding in order for its customers to continue receiving voice service in its service area where there is no terrestrial alternative.
- A demonstration that the reduction in existing universal service funding would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities required for supported voice service.
- A demonstration that the specific reforms would cause a provider to default on existing loans and/or become insolvent.

2. A specific explanation of why the waiver standard is met in this particular case – Provided in the Petition for Waiver and Appendices

3. Appendix 2 - All the financial data and other information sufficient to verify the Allband's assertions, including the following information:

- Density characteristics of the study area or other relevant geographic area including total square miles, subscribers per square mile, road miles, subscribers per road mile, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the area's high costs.
- Information regarding existence or lack of alternative providers of voice and whether those alternative providers offer broadband.
- How unused or spare equipment or facilities is accounted for by providing the Part 32 account and Part 36 separations category this equipment is assigned to.
- Specific details on the make-up of corporate operations expenses such as corporate salaries, the number of employees, the nature of any overhead expenses allocated from affiliated or parent companies, or other expenses.
- Information regarding all end user rate plans, both the standard residential rate and plans that include local calling, long distance, Internet, texting, and/or video capabilities.
- A list of services other than voice telephone services provided over the universal service supported plant, e.g., video or Internet, and the percentage of the study area's telephone subscribers that take these additional services.
- Procedures for allocating shared or common costs between incumbent LEC regulated operations, competitive operations, and other unregulated or unsupported operations.

- Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years. Specifically, the cash flow statement, income statement and balance sheets. Such statements shall include information regarding costs and revenues associated with unregulated operations, e.g., video or Internet.
- Information regarding outstanding loans, including lender, loan terms, and any current discussions regarding restructuring of such loans.
- Identification of the specific facilities that will be taken out of service, absent grant of the requested waiver.

Finally, Allband will promptly provide any additional information requested by the Commission Staff and welcomes their requests.

E. Summary of Facts Provided by This Petition For Waiver

1. The Part 54.302 rule will have the following effect on Allband's total company (regulated and non-regulated) financials, namely, a significant and devastating loss of revenues which will render the company unable to continue operations:

Date	Revenue	Percent Reduction	Earnings	Rate of Return	Tier Ratio
Prior to change	$1,655,995	0%	$410,616	6.6%	1.2
7-1-2012	$1,353,419	18%	$108,040	1.7%	0.3
7-1-2013	$1,050,843	37%	($194,536)	(3.1%)	(0.6)
7-1-2014	$ 748,267	55%	($497,112)	(8.0%)	(1.7)

2. The Framework to Limit Reimbursable Capital and Operating Costs, if adopted as proposed, will have the following effect on Allband's total company (regulated and non-regulated) financials, namely, a significant and devastating loss of revenues which will render the company unable to continue operations:

Date	Revenue	Percent Reduction	Earnings	Rate of Return	Tier Ratio
Prior to change	$1,655,995	0%	$410,616	6.6%	1.2
7-1-2012	$1,257,560	24%	$12,181	0.2%	0.04

3. Consumer voice rates if the revenue shortfall for the changes adopted are flowed through to Allband's customers would be unjust, unreasonable and unaffordable:

Prior to change		$ 19.90 per-line per-month	
Section 54.302 rule–	07-01-2012	$174.90 per-line per-month	779% increase
	07-01-2013	$329.90 per-line per-month	1,579% increase
	07-01 -2014	$484.00 per-line per-month	2,332% increase
Capital and Expense Cap	07-01-2012	$204.00 per-line per-month	925% increase

4. Non-Regulated Income will not offset these losses:

- Non-Regulated net income – ($28,545)
- Non-Regulated net income per-voice line – ($175)

5. The changes will result in the inability of Allband to repay its RUS loan beginning on 7-1-2012:

- Annual loan principal – $313,234
- Annual loan interest – $324,913
- Total principal and interest – $638,147
- Section 54.302 rule revenue loss on 7-1-2012 – $302,576, that increases to $907,728 by 2014.
- Framework to Limit Reimbursable Capital and Operating Costs revenue loss on 7-1-2012 – $398,435

Even if RUS were willing to modify its loan terms, no reasonable modification of the loan terms will allow Allband to meet its loan commitment to RUS. With the full realization of the 54.302 USF support cap impact, Allband wouldn't be able to repay the loan principal. Loss of Federal USF revenue associated with the Framework to Limit Reimbursable Capital and Operating Costs wouldn't allow Allband to repay its RUS loan pursuant to the RUS loan requirements. As shown in Appendix 1, Table 4 (attached to this Petition) TIER ratios fall significantly below RUS requirements. It would not be possible to extend loan repayment since it would require payment well beyond the economic life of the financed plant, which is a practice that is inconsistent with RUS loan requirements. Essentially, Allband in the future would lack cash flow generated through the charging of depreciation on the financed plant.

6. There is no terrestrial alternative that can provide reliable and study area wide voice service to Allband's customers.

7. Allband's network has already been placed into service and was constructed in accordance with RUS specifications and guidelines. As a consequence, there is no alternative technology that Allband could use to reduce its network costs.

IV. LEGAL ARGUMENTS SUPPORTING COMMISSION GRANT OF A WAIVER TO ALLBAND

A. The Grant of a Waiver to Allband would be Consistent with the 1996 Amended Act and the Purported Goals of the Commission's Order in These Dockets.

Allband respectfully asserts that a waiver by the Commission of its Order would be fully consistent with the 1996 Act and with the stated goals and objectives of the Commission's Order.

The Act as amended in 1996 governs and controls this Commission's jurisdiction, authority, and discretion,[25] and establishes clear and specific mandates relative to Universal Service Fund (USF) matters, as follows:

- Section 254 lays out the principles and policies to be applied "for the preservation and advancement of universal service (Section 254(b), 47 U.S.C. 254(b)).
- Section 254(b)(1) establishes the principle that "Quality services should be available at just, reasonable, and affordable rates."
- Section 254(b)(2) mandates that "Access to advanced telecommunications and information services should be provided in all regions of the Nation."

[25] Statutes must be interpreted in accordance with the goals, objectives, and intent of Congress. *Schneidewind v ANR Pipeline Company*, 485 U.S. 293; 108 S. Ct. 1145 (1988).

- Section 254(b)(3) provides:

> (C) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

- Section 254(b)(5) requires that "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."
- Section 254(b)(6) provides that schools, health care providers, and libraries have access to advanced telecommunications services.
- Section 254(b)(7) provides for other principles as the Joint Board and Commission determine are necessary and appropriate "for the protection of the public interest, convenience, and necessity and are consistent with this Act."
- Section 254(d) provides for contributions by carriers "to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."
- Section 254(e) provides that universal service support provided to Eligible Telecommunications Providers "should be explicit and sufficient to achieve the purposes of this section."
- Section 254(g) provides in part that certain rates charged by providers "to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas."
- Section 254(h)(1)(A) provides that a carrier should provide services necessary to a "health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State."
- Section 254(i) provides that "The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable."

Allband has met all of these statutory goals, objectives and requirements of the 1996 Act, commencing with Allband's formation in 2003 and the subsequent design and build-out of a modern communications system by Allband starting in 2005, and continuing to the present. Allband has also placed full reliance on various orders or directives of this Commission, the Michigan Public Service Commission (MPSC), and loan decisions of the Rural Utility Services (RUS).

The grant by the Commission of a waiver to Allband would also be consistent with the overall goals and objectives of the Commission's Order. The Commission's Rulemaking Notice (paragraph 10) stated in relevant part:

> Consistent with the Joint Statement and the Broadband Plan, the Commission plans to be guided by the following four principles, rooted in section 254, as we proceed with USF and ICC reform:
>
> - *Modernize USF and ICC for Broadband*. Modernize and refocus USF and ICC to make affordable broadband available to all Americans and accelerate the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile broadband networks….
> - *Fiscal Responsibility*. Control the size of USF as it transitions to support broadband, including by reducing waste and inefficiency….
> - *Accountability.* Require accountability from companies receiving support, to ensure that public investments are used wisely to deliver intended results….
> - *Market-Driven Policies*. Transition to market-driven and incentive-based policies that encourage technologies and services that maximize the value of scarce program resources and the benefits to all consumers.[16]
>
> [16] We recognize that in some geographic areas there may be no private sector business case for offering voice and broadband services. This is not in tension with our commitment to use market-driven regulation.

Allband by the date of the Commission's Notice had developed a modern network in its territory to provide the envisioned services referenced in the Notice. Allband had also complied fully with all regulatory orders, including adherence to rigorous loan and audit oversight exercised by the RUS. Allband also formulated a small but experienced management and maintenance staff. Allband has thus successfully met and complied with the principles set forth in the Commission's Notice. With respect to the last listed factor referenced in the Notice above, ("market-driven policies"), Allband asserts that no service in its territory would or could have been provided under "market-driven policies." Congress in the 1996 Act established the Universal Service Fund (USF) in recognition of the fact that the desired universal service objective could not be achieved in some areas, such as that served by Allband, utilizing "market-driven policies." Congress recognized that the "market" would not provide the requisite service in some areas absent the USF, and therefore included the USF provisions in the 1996 Amended Act to provide a mechanism to promote service in areas that would not be provided service by the "market."

The Commission's NPRM (paragraph 80) also stated in relevant part:

> Consistent with the statute and the Joint Board recommendations, we propose four specific priorities for the federal universal service high-cost program. *First*, the program must preserve and advance voice service…. *Second*, we seek to ensure universal deployment of modern networks capable of supporting necessary broadband applications as well as voice service…. *Third*, the program must ensure that rates for broadband service are reasonably comparable in all regions of the nation…. *Fourth*, we seek to limit the contribution burden on households. As we have recognized in the past, "if the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and ensuring that contributions from carriers are fair and equitable." [fn omitted].

The Commission has indicated concerns in its Order that USF funds can be more efficiently utilized, so as to eliminate certain "waste and inefficiencies." The Commission also seeks to stretch USF dollars to promote more access to communications on a national basis, with some emphasis on broadband and wireless technologies. The Commission also wants to ensure that USF funding, and surcharges on customer bills to provide such funding on a national basis, does not become burdensome on communications customers (although the Commission does not cite empirical evidence that this threshold has occurred). The Commission also wants to address some perhaps abusive anomalies, and to exert more efforts to carry out its responsibilities relative to USF funding.

The application of the Order to Allband is not necessary or helpful to promoting these goals and objectives. Consistent with the 1996 Act and the proposal of the USF, Allband has been very successful in (i) advancing voice service (and for the first time in a previously unserved "black hole" in northeast Michigan; (ii) in deploying modern networks capable of supporting necessary broadband applications as well as voice service; (iii) in ensuring that rates for broadband service are reasonably comparable to all regions of the nation; and (iv) in limiting the contribution burden on households.[26] Allband is also unaware of any Commission analysis or record that the USF has grown too large, or that the USF has jeopardized other statutory mandates, such as ensuring "affordable rates" or ensuring that "contributions from carriers are fair and equitable."

Allband also asserts that the Commission grant of a waiver to Allband would be consistent with the objectives stated in the Commission's Order as well as the 1996 Act. All of Allband's existing modern network has been designed and constructed utilizing predominantly the funds provided by RUS loans. The approval of the RUS loans and the construction of Allband's network was all undertaken consistent with the plain language, objectives, and intent of the 1996 Act and Orders or decisions of this Commission, the RUS, and the Michigan Public Service Commission. Both Allband and the RUS have heavily relied upon continued USF funding at present levels as the basis for entering into the RUS loans, constructing Allband's network to serve its service area, and as the security to cover loan principal and interest obligations.[27]

[26] With respect to factor (iv) above, there exists no showing that the build-out of Allband's advanced modern communications facilities and network utilizing USF resources has resulted in a "contribution burden on households" or that equivalent build outs by Allband or other companies in accordance with the 1996 Act amendments would cause the universal service fund to grow too large, or would compromise other statutory mandates, such as ensuring affordable rates to all parts of the county, and ensuring that contributions from carriers are fair and equitable."

[27] Because Allband is such a new company, the RUS loans sill have a remaining amortization of 14 or more years, and the revenue stream provided by the USF was pledged as the security to cover the principal and interest payments on the RUS loans.

Allband’s creation and development, utilizing USF Funds, has carried out the intent of Congress as stated in the 1996 Act. By obtaining RUS loans secured by the revenue stream provided by USF funds, Allband has been able to achieve the goals and objectives of the 1996 Act, by implementing and providing service to a sizeable rural area that was previously without service. Allband’s network is comprised of modern and technologically advanced facilities that are fully capable of providing both voice and broadband services. Allband now provides all emergency and other services to its service area as an ILEC. Allband’s facilities and network, and its rate structures, are also comparable to facilities existing in urban areas. Allband’s network provides the infrastructure to provide and expand broadband services to the public. Since these are major goals or objectives sought to be accomplished by the Commission’s Order, then how can the application of the Order to destroy Allband’s finances and ability to provide such services be aligned with the stated objectives of the Order?

The granting of a waiver to Allband would recognize that Allband’s status and circumstances are distinguishable from most other companies. Allband is among the newest companies, and has only recently built a network in an unserved area, all pursuant to very recent regulatory orders. Unlike many other companies, Allband’s facilities are largely undepreciated, and the unamortized portion of its loans are larger. Allband is one of the few companies that would be financially destroyed on an immediate basis by application of the Commission’s Order, a result that will also cause a default of loans issued by a sister federal agency (the RUS). These exigent circumstances provide compelling reasons and good cause for the grant of a waiver to Allband.

B. The Grant of a Waiver to Allband Would Likely Resolve Major Regulatory Uncertainties and Legal Issues

1. Granting a Waiver would be a cost effective method of resolving major regulatory and legal issues

The grant by the Commission of a waiver to Allband would resolve major regulatory and public service uncertainties facing Allband and its customers that are created by the Order. Of equal significance, granting a waiver would resolve major legal issues that overhang the Order if applied to Allband.

As a factual beginning to the legal analysis, the exhaustive regulatory and financial analyses presented in this Petition, as also documented in the attached Affidavit of Allband General Manager Ronald Siegel and the attachments in the Appendix to this Petition, establish without question that the application of the Order to Allband would result in a swift demise of Allband and a default of its RUS loans, along with threats to the continued operation of a recently installed modern and reliable communications network in an area that was previously unserved. The resulting chaos and disputes will be highly counter-productive to the public interest as well as the goals and objectives of the 1996 Act and the Commission's Order.

Granting a waiver would also avoid major legal issues concerning the lawfulness of the highly unfair and unjust retroactive application of the Order to Allband, including the retroactive reversal of regulatory orders and actions upon which Allband had justifiably relied. In contrast, the Commission could accomplish all of its stated goals and objectives as stated in its Order by effectuating a prospective application of the Order through the grant of a waiver to Allband. Generally, such a balanced approach by the Commission would recognize a common sense demarcation between prospective and retroactive policymaking and would dramatically reduce the ultimate need for Allband and a small group of similarly situated companies serving rural populations to seek protective remedies from the Courts. Such an exercise could threaten or delay the Order, and be costly and inefficient as well.

The Commission's first step in pragmatically resolving regulatory or legal disputes stemming from the Order is to refrain from applying its Order on a retroactive basis so as to undercut existing plant investment (and also necessary related operation, maintenance, depreciation, tax and administrative expenses) incurred to provide service in accordance with the FCC Act and previous regulatory orders. As noted, an arbitrary across-the-board retroactive application of the Order to already existing plant investment and other reasonable expenses, and to existing federal loans supported by USF revenues, would detract from or destroy the ability of Allband to continue service including broadband services. Allband relied in good faith on the Commission's previous promises, rules, and orders, and entered into RUS loan agreements and payment commitments which Allband has meticulously complied with to this date. In contrast, in addition to preserving Allband's ability to fulfill its loan obligations, the grant of a waiver to Allband would serve the goals of the Order by promoting the provision of broadband services, and by providing Allband the ability and opportunity to adjust to changed regulatory policies.

2. The Grant of a Waiver Would Resolve Legal Issues Concerning Commission Compliance with the Administrative Procedures Act

The grant of a waiver to Allband could resolve several major legal issues arising under the Administrative Procedures Act ("APA"). Serious questions exist as to whether the Commission's Order, as applied to Allband, violates the APA, 5 U.S.C. § 706(2) as being: (A) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; (B) "contrary to constitutional right, power, privilege, or immunity"; (C) "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"; (D) "without observance of procedure required by law"; (E) "unsupported by substantial evidence in a case subject to Sections 556 and 557 of this Title or otherwise reviewed on the record of an agency hearing provided by statute;" or (F) "unwarranted by the facts to the extent that the facts are subject to a trial de novo by the reviewing court."

Understandably, the Commission in these dockets no doubt was faced with the daunting task of reviewing a vast number of comments submitted by a large number of diverse parties on a national basis. The unfortunate product of this process has been that Allband's circumstances and interests have been wholly ignored in violation of the APA and Due Process. Instead, the Order attempts to fashion a "one shoe fits all" result that is highly unfair and prejudicial to Allband. The Order ignored the record comprising Allband's comments and meeting presentations, and provided no analysis or findings addressing Allband's unique circumstances or the draconian impacts of the Order upon Allband. As a consequence, it appears that the Commission has pursued a pre-ordained agenda to force Allband and other small companies serving rural customers out of business, and to force the transfer of their assets to the same larger companies that always refused to provide service in the subject rural areas, and in a manner that exceeds the Commission's jurisdiction and that is contrary to the language and spirit of the 1996 Act.

Contrary to the APA, the Order does not explain how applicable legal standards or the agency record can support retroactive application of the Order to punish or destroy a company that fully followed all aspects of federal and state law and regulatory orders. The Order does not analyze or acknowledge Allband's unique factual circumstances as an entity that has recently developed a network in a high cost, previously unserved area, and that has justifiably relied on USF financial resources to meet its RUS loan obligations and its other expenses to provide service. The Order simply ignores the fact that the arbitrary $3,000 per line cap, among other financial limitations set forth in the Order, simply does not fit Allband's situation.

Contrary to APA requirements, several aspects of the Order are inconsistent and irrational, or unsupported by the record. The Order suggests that a major objective is to economize USF dollars, while the Order also acknowledges that it would adversely affect only a few companies, with limited lines, that draw upon an infinitesimally small portion of the $4.5 billion annual budget of USF funds. This leads to the conclusion that the Order may be designed to selectively punish only a few targeted companies, including Allband, that have successfully implemented service in unserved areas and that have successfully carried out the purpose of the USF as established in the 1996 Act. In this way, and as applied to Allband, the Order is contrary to the 1996 Act and the Commission's jurisdiction thereunder.

The Order also arbitrarily limits allowable Company expenses on an across-the-board formulistic basis, devoid of any rational "just and reasonable" analysis focusing upon individual company circumstances. The Order's severe limitation on reasonable expense levels ignores the expenses that are incurred to provide and maintain service and to comply with extensive state and federal regulatory requirements, not the least of which is the need to respond to the Commission's rulemaking in these dockets, including the ancillary waiver and other procedures.

The Order's presumptions as to which technology best fits a company or area, and the Order's inherent second-guessing and retroactive reversals of decisions made previously by the Commission or the RUS, are also irrational. In Allband's situation, the Order would cause a prompt default of federal loans approved by the RUS and funded by taxpayers, by unnecessarily limiting USF funds collected from ratepayers under the 1996 Act expressly for the purpose of promoting the implementation of service in unserved areas.

The Commission may well have provided for the waiver process in recognition that its Order would be too rigid and irrational as applied to specific companies and circumstances. If so, Allband respectfully asserts that it is one of the most deserving entities in the nation that qualifies for a grant of a waiver, and that it has provided in this waiver request and attachments exhaustive specific information and data to support the grant of a waiver.

3. The Grant of a Waiver to Allband Would Resolve Constitutional and Breach of Contract Issues

The grant of a waiver to Allband would resolve major issues concerning the constitutionality of the Order as applied to Allband under Taking and Due Process principles. In addition, absent the grant of a waiver, the courts may find the Commission's Order constitutes a breach of contract by the federal government, as applied to Allband.

As to constitutional violations, the Commission's Order transgresses the Fifth Amendment which prohibits the confiscatory taking of property as a violation of the Takings Clause and substantive Due Process.[28] Without correcting the immediate, unconstitutional confiscatory impact of the Commission's Order by granting a waiver, the Order will destroy Allband as an entity, to the detriment of the cooperative's customer-owners and their membership equity interests. The Order would destroy the security (the USF revenues) pledged to ensure the payment of RUS loans and would sharply curtail or disallow, for USF reimbursement purposes, the recognition of lawful and reasonable expenses incurred by Allband to provide service and to meet numerous state and federal regulatory requirements. The immediate and adverse impact upon Allband resulting from the Order to Allband is well documented in this Waiver Petition and its attachments.

Absent a waiver, the Constitution prohibits the Commission from destroying Allband by setting rates or promulgating rules which constitute a confiscatory taking. Allband's assertion that the Commission's Order results in an unconstitutional confiscation of Allband's property is established by the analysis of the United States Supreme Court when evaluating the constitutional requirements

[28] The effect of the Commission's Order, as applied to Allband and a very small "selected" class of similarly placed entities, also resembles an unconstitutional Bill of Attainder which the United States Supreme Court applied against Congressional or legislative acts. See, *United States v Lovett*, 328 U.S. 303, 315 (1946). Such a small, selected class of similarly situated companies may have been identified and deliberately targeted prior to the Commission's Order for differential punitive treatment, as being outside of the "market-based" economic model favored by the Commission, applied inflexibly by the Commission in this instance.

applicable to ratemaking. It is settled law the "power to regulate is not a power to destroy...." *R. R. Comm'n Cases*, 116 U.S. 307, 331 (1886). In *Bluefield Waterworks & Improvement Co. v Public Service Comm'n of West Virginia*, 262 U.S. 679, 692-693; 42 S. Ct. 675 (1923), the Court stated in relevant part that: "What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts…. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties…."[29] Allband differs in some ways from private investor utilities, regulated on a rate of return basis, but, in this instance, the Commission's Order serves to destroy the financial soundness of the company, and Allband's ability to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

In addition, the Commission's Order, as applied to Allband, must be at least consistent with the requirements of *Hope Natural Gas* allowing for returns "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." The Commission's Order should not "jeopardize the financial integrity of the compan[y], either by leaving [it] insufficient operating capital or by impeding [its] ability to raise future capital" and should permit returns sufficient "to compensate current equity holders for the risk associated with their investments." (See, *Duquesne Light Co. v Barasch*, 488 U.S. 299 at 312 (1989), *Fed. Power Comm'n v Natural Gas Pipeline Co.*, 315 U.S. 575, 603 (1942) (Black, J. concurring), and *Fed. Power Comm'n v Hope Natural Gas Co.*, 320 U.S. 591 (1944), at 601 and 603.)

[29] The Court had previously recognized such a taking in *Covington & Lexington Tpk. Rd. Co. v Sandford*, 164 U.S. 578, 597 (1896) and there is a long line of cases following this holding. For example, *Pa. Coal Co. v Mahon*, 260 U.S. 393, 415 (1922) held the government may effect a taking without physical occupation or appropriation if it "goes too far...."

The Commission is not exempt from the above constitutional requirements. Allband asserts that the Commission in part is a rate-making agency, and that the Commission does not have the constitutional or statutory authority to fashion orders designed to selectively destroy companies, or to pick winners and losers, and to dictate nationwide economic restructurings not expressly authorized by statute, whether such destructive outcomes were intended or not.[30] In its orders, and in granting Allband's waiver, the Commission is compelled to recognize factually the "economic impact of the regulation" on Allband, "the extent to which the regulation has interfered with distinct investment-backed expectations," and "the character of the governmental action." While the Commission Order may not directly constitute a physical invasion of Allband's property, its impact is the same because at some near point Allband's assets will be claimed by creditors or successors in interest (See, *Penn Central Transportation Co. v City of New York*, 438 U.S. 104, 124 (1978)).

Finally, the Commission's Order is the kind of retroactive regulatory action the Court rejected in *United States v Winstar Corporation*, 518 U.S. 839; 116 S. Ct. 2432 (1996), in which the Federal Home Loan Board promulgated rules to encourage investors in good standing to take over ailing banking thrifts by counting goodwill as an asset, with a premise the rules would not change. However, subsequently Congress forbid such thrifts from using goodwill credits for required reserves -- a retroactive reversal of policy that rendered the Appellant (*Winstar*) insolvent. The Court ruled such Congressional action constituted a breach of contract permitting awards of damages to Winstar and other thrifts that had contracted with the FHLB to take over ailing thrifts, and that suffered damages or harm from Congress' change in the rules. Here, just like the situation in *Winstar*, Allband

[30] Even if there is dispute as to whether the Commission is not a rate-making agency for purposes of its confiscation of Allband's property, the Constitutional prohibition against non-possessory regulatory taking is clearly established in *Lucas v South Carolina Coastal Council*, 505 U.S. 1003, 1015; 112 S. Ct. 2886 (1992), which held a non-possessory regulation may constitute a per se taking if it deprives the owner of "all economically beneficial or productive use of land." The Commission's Order here literally will deprive Allband of the use of its property, absent a waiver.

entered into contracts with the RUS, taking out loans under the presumption that Commission regulatory rules and orders governing the USF under the 1996 Act would remain unchanged (and in a situation where all parties knew that the USF revenues constituted an absolute prerequisite to repay the loan principal and interest).

Without a grant of this Waiver Petition by the Commission, both Allband and the RUS would be harmed by the Commission's retroactive reversal and changes of the USF program, and of its fairly long-standing interpretation and application of the 1996 Act. Allband, supported by *Winstar*, asserts its contracts with RUS need not contain promises to refrain from regulatory change in order to establish a breach of contract action against the federal government. Similar to the *Winstar* situation, Allband also urges that, based upon estoppel and fairness considerations, the Commission should refrain from reversing or disregarding previous regulatory orders and decisions, and should not apply its Order retroactively to Allband.

V. CONCLUSION AND RELIEF

This Petition for Waiver for Allband should be approved by the Commission before the July 1, 2012 implementation date of the Ordered Federal USF reforms discussed herein. This Petition for Waiver clearly demonstrates that good cause exists for exempting Allband from (a) the Part 54.302 rule and (b) the Framework to Limit Reimbursable Capital and Operating Costs. Allband therefore respectfully requests the Commission to grant the following relief pursuant to this Petition:

A. That the Commission waive and exempt Allband from (a) the Part 54.302 rule and (b) the Framework to Limit Reimbursable Capital and Operating Costs;

B. That the Commission recognize in all respects Allband's unique status and compelling grounds for full relief pursuant to this Waiver Petition, and find that the approval by the Commission of this Waiver Petition is necessary and in the public interest to ensure that Allband can continue to provide voice and other services to the public as an ILEC pursuant to this Commission's previous approvals, and can continue Allband's capability to provide Broadband and other services to the public;

C. That the Commission grant such other and further and consistent relief that is lawful and reasonable.

Respectfully submitted,

ALLBAND COMMUNICATIONS COOPERATIVE

By Its Counsel:

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Dated: February 3, 2012

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Lifeline and Line-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

AFFIDAVIT OF RONALD K. SIEGEL JR.
IN SUPPORT OF WAIVER PETITION OF
ALLBAND COMMUNICATIONS COOPERATIVE

I, Ronald K. Siegel Jr., being of lawful age and duly sworn, state as follows:

1. My name is Ronald K. Siegel Jr. My business address is 7251 Cemetery Rd., Curran, MI 48728. My title is General Manager of Allband Communications Cooperative ("Allband") and have worked for the cooperative in a management capacity since 2004. I am responsible for overseeing the daily operations of Allband, regulatory affairs, project development, community outreach and the general viability of the cooperative. I have conducted extensive research and project management in Allband's rural area since 2002 and have actively

pursued ways to correct the communication digital divide that exists between rural and urban areas in Michigan.

2. I submit this Affidavit in support of the Petition of Allband Communications Cooperative (Allband) for Waiver of Part 54.032 and the Framework to Limit Reimbursable Capital and Operating Costs. I hereby verify that as the General Manager of Allband, I have reviewed the petition and verify the facts asserted and that I have supervised the compilation of the waiver request and listed financial exhibits and they accurately portray the financial status and effects the Commission's reform will have on the Cooperative. Absent a waiver, the revenue reductions caused by the implementation of the Part 54.302 rule or the Framework to Limit Reimbursable Capital and Operating Costs would harm Allband by providing insufficient revenues to:

- Continue to provide voice service to any of its customers and,
- Pay the principal and interest on its RUS loan and,
- Continue operations as a telecommunications carrier.

Pursuant to Section 1.3 of the Commission's rules Allband respectfully petitions the Commission to:

1. Waive for Allband the implementation of the Part 54.302 Rule, based on the facts presented herein;
2. Waive for Allband the implementation date of the Framework to Limit Reimbursable Capital and Operating Costs, based on the facts presented herein.

Allband respectively requests that the Commission promptly review and approve this waiver because the harm described herein will occur on July 1, 2012 if these Federal Universal Service

Fund (USF) changes are implemented for Allband and this Petition provides good cause to grant the waiver.

3. Allband provides service in its Robbs Creek exchange, which comprises 177 square miles located in portions of four (4) counties in northeast Lower Michigan. Robbs Creek, a rural, heavily forested area with an average population density of approximately one premise per mile, remained for decades an unlikely candidate for telephone service, especially a Fiber to the Home (FTTH) network. Due to the goals of the 1996 Act[1] and the Universal Service Fund (USF), Allband is able to provide reliable and life-saving advanced communications in one of the most economically distressed areas of Michigan. Since this area was previously unserved/unassigned[2], Allband began a long journey of becoming the first ILEC to be formed in decades with the intention of utilizing the many benefits of the Universal Service Fund on behalf of its community. Allband represents many of the goals the fund sought to address; more specifically, providing support to insure affordable rates for service for customers in rural areas where the high cost of investment stifled telecommunication growth. By utilizing the fund and by joining the National Exchange Carrier Association (NECA) pools, Allband can recover its costs so that it can provide reliable 911 and traditional exchange services at a price its customers can afford.

4. Allband is the first ILEC to be formed in many years in Michigan. Allband is also the first non-profit telephone cooperative in Michigan and provides one of the most

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[1] Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Act).

[2] For the purposes of this affidavit, an "unserved" area is defined as a geographic region that does not have telephone or broadband services. An "unassigned" area is defined as a geographic area that has never been served by an Incumbent Local Exchange Carrier and is not included in a registered state tariff.

advanced networks in Michigan via pure fiber to the home infrastructure. Until 2005, when Allband activated its first subscriber, Allband's Robbs Creek Exchange was the largest of several unserved/unassigned areas in Michigan. The development of Allband has been a true challenge from both a regulatory and physical development standpoint. It took multiple years to obtain the funding, licenses, waivers and property easements to build our network in an area which is extremely rural and difficult to construct in. By utilizing USF and NECA support, Allband has successfully served an area that for decades was ignored by other carriers due to the high cost of construction and lack of revenue due to low population densities.

5. Allband provides start-of-the-art telecommunication services such as traditional telephone service, long distance, high-speed Internet, security services, computer repair/support, computer training and IT consulting services.

6. For the last five years, Allband has utilized its $8,067,000 RUS loan to construct a network in this unserved area. Allband has maintained a near perfect customer service record, has not received a single complaint with the Michigan Public Service Commission (MPSC) and provides a cooperative environment whereby our subscribers are served on an efficient and reliable basis. Allband was started to provide 911 services in an area that lacked traditional telephones and cellular service and saving lives continues to be the cooperative's number one priority.

7. The following timeline of the cooperative's development demonstrates that Allband has met the regulatory requirements needed to utilize Universal Service Funding, a critical component needed to (a) maintain affordable customer rates and services that are comparable to those provided in urban areas, (b) provide and maintain quality service, and (c) meet its RUS debt obligations associated with the network used to deliver such services:

a. After being denied basic telephone service by GTE at his Curran, MI residence and then left without an alternate solution, now Allband President John Reigle began coordinating the formation of Allband with Michigan State University in early 2000.

b. On November 3, 2003, after extensive planning and organizational efforts, Allband filed its Articles of Incorporation with the State of Michigan.

c. On July 29, 2004, Allband filed a complete loan application with the USDA Rural Development, the only source of financing obtainable to build its new network, as private lending institutions were not inclined to finance such as investment.

d. On August 31, 2004, the MPSC in Case No. U-14200[3] granted Allband a temporary license to provide service in its Robbs Creek Exchange, an unserved/unassigned geographical location. A permanent license was granted by the MPSC in Case No. U-14200 on December 2, 2004.

e. Allband obtained RUS funding on Oct. 7, 2004 and began constructing an all fiber, passive optical, state of the art telecommunications network that would allow Allband not only to provide standard telecommunications services, but also ubiquitous broadband and other advanced services.

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[3] See, *In the matter of the application of Allband Communications Cooperative for a temporary and permanent license to provide basic local exchange service in the proposed Robbs Creek Exchange*, Case No. U-14200, dated December 2. 2004.

f. On August 11, 2005, the FCC granted Allband's waiver[4] of certain FCC's rules and allowed Allband to be treated as an ILEC for NECA pooling and Universal Service purposes.

g. On August 18, 2005, the USDA Rural Development Program officially announced a loan for $8,067,000 to fund the construction of Allband's network.[5]

h. On October 19, 2005, Allband started construction in its Robbs Creek Exchange.

i. On November 10, 2005, the MPSC in Case No. U-14659[6] granted Eligible Telecommunications Carrier (ETC) status to Allband.

j. On November 30, 2006, Allband activated its first cooperative member.

k. In December 2006, after obtaining the necessary waivers from the FCC, Allband was allowed to join the National Exchange Carrier Association ("NECA") pools as an ILEC. This action allowed Allband to (a) minimize administrative expenses and (b) maintain reasonable and stable access rates. Because the Universal Service Administration Company ("USAC") and NECA recognized Allband as an ILEC per its FCC waivers, NECA began providing Interim Common Line Support and Local Switching Support to the cooperative.

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[4] See, *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules in WC Docket No. 05-174*, released August 11, 2005, (Allband Order).

[5] USDA Rural Development Loan (RUS) Borrower MI-570-A

[6] See, *In the matter of the application of Allband Communications Cooperative for designation as an Eligible Telecommunications Carrier pursuant to Section 214(e) of the Telecommunications Act of 1996*, Case No. 14659, dated November 10, 2005.

l. In January 2008, Allband began receiving High Cost Loop Support from USAC/NECA. This support is being used to recover a substantive portion of the ongoing high cost of providing ubiquitous network facilities and thus enables Allband to maintain reasonable local exchange consumer rate levels (Currently $19.90 per month plus taxes and regulatory fees).

8. Both Part 54.302 limiting support to $3,000 per line annually and the Framework to Limit Reimbursable Capital and Operating Costs have the effect of retroactively depriving Allband of Federal USF revenues for recovery of investments already made in its network and associated operating expenses in full reliance upon all existing regulatory requirements and procedures that have been in place since Allband's formation. If the Allband Board of Directors and management had known that Part 54.302 and the Framework would be enacted, the formation of Allband to serve the Robbs Creek exchange would not have been explored and Allband would have not pursued a loan from the Rural Utility Service to finance the network facilities needed to provide service. One of the effects of this Commission's proposed rule changes is that Allband will be unable to repay its loan to RUS and it will default on its promissory note with the United States of America.

9. If Part 54.302 and the new Framework requirements are not waived, Allband will be forced to cease operations due to a lack of operating revenue recovery. The direct result will be that lifeline telephone service will no longer be available effective July 1, 2012, the effective date of the reform changes. Per the waiver request, Allband would have to increase its fees for basic local exchange service to $174.90 per month on July 1, 2012 to remain operational. It is clearly unreasonable to expect customers to bear these rate increases and to keep their phone service. In addition to the fact that customers could not afford these rates, these rates would be at

odds with the Act's requirement for affordable rates that are comparable to those charged in urban areas.

10. Allband cannot recover the lost revenues from its switched intercarrier compensation rates. In its Order, the FCC has capped and is, over a transition period, eliminating most of the switched intercarrier compensation revenue. As a consequence, Allband may not recover any significant amount of the Federal USF revenue losses from this revenue source. The only intercarrier compensation rate that was not capped by the Commission is the intrastate originating switched access rate. If Allband tried to recover its Federal USF revenue loss from this revenue source, this rate would have to increase exponentially. An increase is clearly not feasible because Allband would no longer have interexchange carriers willing to serve customers in its service area. Even in the unlikely occurrence that interexchange carriers continued to provide service, when these switched access rate increases are flowed through to increases to customer toll rates, it is quite likely that all the landline toll customers in Allband's service area would disconnect this service.

11. Allband cannot recover the lost Federal USF revenues from Michigan's state universal service fund. That fund was established by state law and MPSC rule to specifically recover only intrastate access charge reductions adopted in 2010 by the MPSC.

12. As required by the Commission's Order, Appendices to this Petition for Waiver provide the requested information about Allband's individual circumstances to support approval of Allband's Petition for Waiver. The required information shows that the ordered Part 54.302 rule and the Framework to Limit Reimbursable Capital and Operating Costs reductions in current Federal USF revenue would (a) destroy Allband's financial viability, (b) imperil and in fact eliminate voice service to consumers in the area where Allband provides service, and (c) require Allband to default on its loan payments to RUS.

13. Approval by the Commission of the Waiver is necessary and in the public interest to ensure that consumers in the area served by Allband continue to receive voice service. Allband welcomes a rigorous, thorough and searching review of the information attached to this Petition for Waiver and requests the Commission or Staff to promptly request any additional information deemed necessary. Allband's staff and consultants will work diligently to accommodate and respond to any Commission request for information needed to justify the cooperative's need for USF support at current levels.

14. As General Manager of Allband, I have supervised the compilation of exhaustive information to support the grant of this waiver petition. The appendices to this waiver provide the following information as requested by the commission:

Appendix 1: Total Earnings Review:

a. A showing of revenue derived from network facilities that are supported by USF revenues, both regulated and unregulated.

b. A showing that, without existing USF funding, Allband cannot achieve the purposes of Section 254 of the Act.

c. A showing that Allband requires its existing USF funding in order to continue providing voice services to its members in an area which does not have alternative terrestrial providers.

d. A showing that the Commission's order and rules, absent grant of this waiver petition, would cause Allband to default on its existing RUS loans and/or become insolvent.

Appendix 2: Financial Data and Other Information:

a. Characteristics of Robbs Creek that contribute to its high cost.

b. Information regarding a lack of alternate providers.

c. Part 36 and 32 unused or spare equipment assignments.

d. Information on Allband's corporate expenses.

e. Information on Allband's rate plans, both regulated and unregulated.

f. A Cost Allocation Manual (CAM) demonstrating procedures on the allocation of shared or common costs between regulated ILEC operations and unregulated affiliate operations.

g. Audited Financial Statements (2008 – 2010).

h. Information regarding outstanding loans with RUS, which includes both Allband's Promissory Note and Loan Agreement with the Unites States of America.

i. Identification of facilities which will be taken out of service, which in Allband's case will be its entire network.

15. The Allband Board of Directors and Management respectfully request that the Commission recognize the accomplishments the Allband Communications Cooperative has achieved and the benefits it has brought to its community in a relatively short period of time, and that the Commission waive, as applied to Allband, all USF support reductions as presented in the Commission's order and revised rules. This requested Commission action will allow Allband to continue providing telephone service pursuant to the requirements of the Act, and is essential to the repayment of its debt obligations to the United States Government.

16. This completes my affidavit.

VERIFICATION

I, Ronald K. Siegel Jr., declare under penalty of perjury that the statements in this Affidavit are true and correct to the best of my knowledge and belief.

Ronald K. Siegel Jr.
General Manager
Allband Communications Cooperative
7251 Cemetery Rd.
Curran, MI 48728

Subscribed and sworn to before me, this
2 day of February, 2012.

Lindsay Smolinski (Printed Name)
Notary Public, Alcona County, Michigan
Acting in the County of Alcona
My Commission Expires: 6/4/16